



THE ATTORNEY GENERAL  
OF TEXAS

February 24, 1988

JIM MATTOX  
ATTORNEY GENERAL

Honorable David Aden  
Mayor  
City of Splendora  
P. O. Box 1087  
Splendora, Texas 77372

LO-88-20

Dear Mayor Aden:

Thank you for your letter of February 8, 1988, in which you ask for an opinion on the authority of the city council to call a special election. Sections 402.042 and 402.043 of the Government Code, which authorize this office to issue opinions, set out the public officials who may request opinions. Mayors are not among those persons authorized to request legal opinions. We are prohibited by section 402.045 of the code from giving legal advice or a written opinion to any other person.

However, we can point out that there is a well established line of case law that requires either statutory or constitutional authorization to call an election. In Smith v. Morton Independent School District, 85 S.W.2d 853 (Tex. Civ. App. - Amarillo 1935, writ dismiss'd) the court said,

In our form of government elections must be held by virtue of some legal authority, and an election held without affirmative statutory authority or contrary to a material provision of the law is universally held to be a nullity.

Id. at 857. See Ellis v. Hanks, 478 S.W.2d 172 (Tex. Civ. App. - Dallas 1972, writ ref'd n.r.e.); Ellis v. State, 383 S.W.2d 635 (Tex. Civ. App. - Dallas 1964, no writ); Countz v. Mitchell, 38 S.W.2d 770, opinion adopted (Tex. 1931); Williams v. Glover, 259 S.W. 957 (Tex. Civ. App. - Waco 1924, no writ); Attorney General Opinion V-564 (1948).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Rick Gilpin".

Rick Gilpin, Chairman  
Opinion Committee

RG/PR/er  
cc: Mr. Kevin Kneisley